

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff-Respondent,
v.

Criminal Case No. 12-20043
Civil Case No. 16-10425
HON. DENISE PAGE HOOD

ARTHUR PAYTON,

Defendant-Petitioner.

**ORDER DENYING APPLICATION FOR
CERTIFICATE OF APPEALABILITY [#107]**

Presently before the Court is Petitioner's Application for Certificate of Appealability (the "Application"). [Dkt. No. 107] The Application relates to the Court's Order dated November 30, 2016, wherein the Court denied Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. [Dkt. No. 90] In the November 30, 2016 Order, the Court expressly addressed whether to issue a certificate of appealability in this case. The Court stated:

"The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. foll. § 2254. In order to obtain a certificate of appealability, a defendant "must make a substantial showing of the denial of a constitutional right." *Slack v. Daniel*, 529 U.S. 473, 483 (2000); 28 U.S.C. § 2253(c)(2). To demonstrate this denial, the defendant is required to show that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner, or that the issues presented were adequate to deserve encouragement to proceed further." *Slack*, 529 U.S. at 483-84 (citation and internal

quotations omitted). In other words, when a district court rejects a defendant's constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims to be debatable or wrong. *Id.* at 484. Courts must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997).

The Court concludes that, with respect to any of the grounds asserted in his 2255 motion, Petitioner has not shown (and cannot show) that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner, or that the issues presented were adequate to deserve encouragement to proceed further." *Slack*, 529 U.S. at 483-84 (citation and internal quotations omitted). For the reasons stated above, the Court finds that the issues raised by Petitioner are without merit, and it will not issue Petitioner a certificate of appealability.

For the same reasons, the Court again ORDERS that a certificate of appealability not issue in this case.

Accordingly, IT IS ORDERED that Petitioner's Application for Certificate of Appealability [Dkt. No. 107] is DENIED.

S/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: March 1, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 1, 2017, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager